



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
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Lafayette, Louisiana 70506



May 22, 2012

Colonel Edward R. Fleming  
District Commander  
U.S. Army Corps of Engineers  
Post Office Box 60267  
New Orleans, Louisiana 70160-0267

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2012 MAY 29 PM 2:20  
OFFICE OF COASTAL MANAGEMENT

Dear Colonel Fleming:

The Fish and Wildlife Service (Service) has reviewed Public Notice MVN-2011-2935-EFF (CUP NO. P20120216), dated May 8, 2012. The State of Louisiana Coastal Protection and Restoration Authority (CPRA) has requested a permit to construct the Shell Island East Restoration Berm Enhancement Project and the Shell Island West Natural Resource Damage Assessment Restoration Project (BA-110/111). The proposed project is located in Plaquemines Parish, Louisiana. The Service has reviewed the project information and offers the following comments in accordance with the Fish and Wildlife Coordination Act (FWCA) (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Migratory Bird Treaty Act (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703 et seq.), and the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

The Service is committed to the protection of Louisiana's wetlands from ongoing land loss and recognizes that the proposed project will benefit coastal wetlands in the Barataria Bay estuary by extending the longevity of vital barrier islands. For those reasons, we fully support the proposed activity.

### Deepwater Horizon Contaminated Sediment

In the Spring and Summer of 2010, the proposed work area was contaminated with oil from the Deepwater Horizon oil spill. Much of that oil settled into the substrate on the bottom of the bay. The proposed dredging for access canals and dike borrow material may re-suspend oiled sediment, which could result in adverse impacts to an assortment of fish and wildlife species. To minimize that potential effect, we recommend that the applicant work with the U. S. Coast Guard regarding dredging protocol in this sensitive area. The Coast Guard contact for such consultation is Chief Aaron Hemme. He can be reached at 504-252-8854 or via e-mail at [aaron.s.hemme@uscg.mil](mailto:aaron.s.hemme@uscg.mil).

### Migratory Birds

The previous berm construction located along the Shell Island East has resulted in the creation of suitable substrate for nesting shorebirds. If the proposed island restoration work is conducted during the nesting season (March 1 to September 15), the proximity of that work to nesting shorebirds could result in nest abandonment and ultimately the loss of migratory birds.

The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the U.S. Department of the Interior. While the MBTA has no provision for allowing unauthorized take, the Service realizes that some birds may be harassed, harmed, or killed due to project construction even if all reasonable measures to protect birds are implemented. The Service's Office of Law Enforcement (LE) carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to minimize their impacts on migratory birds, and by encouraging others to enact such programs. As such, LE focuses their resources on investigating and prosecuting entities that take migratory birds without regard for their actions or without consideration of Service conservation and/or impact minimization measures to avoid take.

In order to minimize disturbance to nesting shorebirds, the Service suggests that CPRA work with the Louisiana Ecological Services Office to develop a migratory bird abatement plan. Such action will prevent bird mortality by deterring birds from nesting on the island, and will allow the proposed restoration work to proceed without costly delays. Accordingly, we recommend that the U.S. Army Corps of Engineers (Corps) condition the issued permit to require the development of a migratory bird abatement plan.

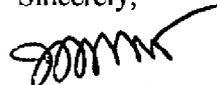
### Endangered Species

The recent berm construction on Shell Island East has also resulted in the creation of suitable habitat for the federally threatened piping plover (*Charadrius melodus*). Piping plovers winter in Louisiana and may be present for 8 to 10 months annually. They arrive from their breeding grounds as early as late July and remain until late March or April. Piping plovers feed extensively on intertidal beaches, mudflats, sand flats, algal flats, and wash-over passes with no or very sparse emergent vegetation; they also require un-vegetated or sparsely vegetated areas for roosting. Roosting areas may have debris, detritus, or micro-topographic relief offering refuge to plovers from high winds and cold weather. In most areas, wintering piping plovers are dependent on a mosaic of sites distributed throughout the landscape, because the suitability of a particular site for foraging or roosting is dependent on local weather and tidal conditions. Wintering plovers move among sites as environmental conditions change, and studies have indicated that they generally remain within a 2-mile area. Major threats to this species include the loss and degradation of habitat due to development, disturbance by humans and pets, and predation. Critical habitat has also been designated for that species; however, none occurs within the proposed project area.

The Service does not have records of the piping plover's historical use of the project area and few, if any, surveys have been conducted in the project area or vicinity due to its remote location and previous lack of suitable habitat. Please note that the newly created sub-aerial sand and/or shell beaches or flats do provide suitable foraging and roosting habitat for piping plovers; as such, there may be birds utilizing the project area during the wintering season. The Service realizes that the intended work would benefit piping plovers by creating additional mud flat habitat, and that the proposed island restoration work would likely be conducted during the wintering season when birds are present. In an electronic transmittal dated May 22, 2012, your office offered a determination that the proposed action is not likely to adversely affect the piping plover. That determination was based on the following: the completed project would sustain suitable plover habitat; the potential disturbance to foraging and/or roosting plovers would be temporary and discountable in nature; and, there is an abundance of suitable habitat in nearby areas into which piping plovers can temporarily disperse. The Service agrees with that assessment, and therefore concurs with the Corps' determination that the proposed project is not likely to adversely affect the piping plover. If the Corps or CPRA has questions regarding piping plovers, please contact Ms. Brigitte Firmin of this office at 337/291-3108.

The above findings and recommendations constitute the report of the Department of the Interior. For questions regarding this letter or further coordination regarding the migratory bird abatement plan, please contact Ms. Patti Holland of this office at 337/291-3121.

Sincerely,



Jeffrey D. Weller  
Supervisor

Louisiana Ecological Services Office

cc: CPRA, Baton Rouge, LA  
EPA, Dallas, TX  
LDWF, Natural Heritage Program, Baton Rouge, LA  
LDNR/OCM, Baton Rouge, LA  
NMFS, Baton Rouge, LA